IN THE INCOME TAX APPELLATE TRIBUNAL
LUCKNOW BENCH 'A', LUCKNOW
(THROUGH VIRTUAL HEARING)

BEFORE SHRI A. D. JAIN, VICE PRESIDENT
AND SHRI T. S. KAPOOR, ACCOUNTANT MEMBER

ITA No.503/Lkw/2019
Assessment Year:2015-16

Smt. Sarita Gupta, K-168, Gopal Nagar, Kidwai nagar, Kanpur. PAN:AFXPG0883K	Vs.	Income Tax Officer-3(4), Kanpur.
(Appellant)		(Respondent)

Appellant by	Shri Rakesh Garg, Advocate
Respondent by	Shri Ajay Kumar, D.R.
Date of hearing	06/01/2021
Date of pronouncement	18/01/2021

O R D E R

PER T. S. KAPOOR, A.M.

This is an appeal filed by the assessee against the order of learned CIT(A)-I, Kanpur dated 26/06/2019 pertaining to assessment year 2015-2016.

2. Learned counsel for the assessee, at the outset, submitted that there is a delay of five days in filing the appeal which happened due to confusion as to the date of service of notice. It was submitted that CIT(A) sent the order by mail on 06/07/2019 whereas the physical copy o0f the same was received by the assessee on 24/07/2019. The assessee mistook the date of service as 24/07/2019 instead of 06/07/2019 and that is why it

has caused a delay of five days which may be condoned. Learned counsel for the assessee submitted that a copy of affidavit duly signed and notarized along with the copy of petition for condonation of delay is placed on record and prayed that the delay may be condoned and the appeal may be admitted. Learned D. R. had no objection to the condonation of delay therefore, finding the cause of delay to be genuine, learned A.R. was directed to proceed with his arguments on merits.

3. Learned counsel for the assessee submitted that the case of the assessee is duly covered in favour of the assessee by consolidated of the Tribunal in the case of other family members of the assessee vide order dated 16/12/2020 wherein the similar issue was decided by the Tribunal in favour of the assessee.

4. Learned D. R. submitted that the assessee did not represent before the CIT(A) and therefore, the appeal may be set aside to the office of learned CIT(A). Learned counsel for the assessee in rejoinder submitted that learned CIT(A) has passed the order on merit and in earlier cases also, similar argument was taken by Learned D. R. Learned counsel for the assessee prayed that the appeal of the assessee may be decided following the earlier Tribunal order.

5. We have heard the rival parties and have gone through the material placed on record. The brief facts of the case are that the assessee claimed a Long Term Capital Gain on the sale of equity shares of CCL International Ltd. which the Assessing Officer, relying on the report of investigation wing of Kolkata, held to be bogus and made the addition u/s 68 of the Act. The assessee had purchased 25,000 shares from Suktara Trade Link Private Limited, a copy of bill is placed at page 5 of the paper

book. The purchase consideration was paid at Rs.8,25,000/- and the payment was made through RTGS from the IDBI Bank of the assessee. The payment of Rs.8,25,000/- is reflected on 29/11/2013 and is evidenced from page 4 of the paper book. the shares of CCL International Ltd. got credited to DEMAT account of the assessee on 02/12/2013 which is evident from page 11 of the paper book where a copy of DEMAT statement of the assessee is placed. Page 17 of the paper book, which again is a copy of DEMAT statement, reflects that the assessee sold 25,000 shares of CCL International Ltd. in five trenches of 5,000 on each date starting from 9th December, 2014 to 19th January, 2015. The sale of such shares is corroborated by contract notes issued by SEBI registered broker M/s Edelweiss Financial Advisors Ltd., a copy of contract note is placed at pages 6 to 10 of the paper book. These contract notes show the order time, trade number and trade time of the shares sold and also show that Security Transaction Tax and Service Tax was also paid by the assessee. The sale proceeds of such shares was credited to the bank account of the assessee. A copy of bank account where the proceeds are reflected is placed in paper book pages 24 to 25. The copy of DEMAT statement of assessee reflects various other shares also which the assessee was holding. All these documentary evidences, which were before the Assessing Officer, show that assessee did earn Long Term Capital Gain on the sale of equity shares of CCL International Ltd. Lucknow Bench of the Tribunal in the consolidated order dated 16/12/2020 has decided similar issue in favour of the assessee by holding as under:

> *"6. We have heard the rival parties and have gone through the material placed on record. We find that Ground Nos. 1 to 4 were not passed by Learned A. R. as he requested to pass the order on merits and therefore, same are dismissed as not pressed. Ground Nos. 5 to 8 relates to the addition under dispute regarding denial of exemption of long term capital gain. Ground No. 9 and 10 are regarding addition u/s 69 of the Act which the Assessing Officer had made on the basis that assessee must have paid some commission for*

arrangement of bogus capital gain. The facts in brief are that assessee sold shares of CCL International Ltd. and earned long term capital gain. In support of long term capital gain the assessee filed before Assessing Officer the following documents (which is part of the paper book):

S.No.	*Nature of documents*	*Paper Book Page No*
1.	*Copy of Bank Account of Federal Bank.*	*15-16*
2.	*Copy of Bill Suktara Trade Link Filed*	*17*
3.	*Copy of Contract note issued by Broker Edlwise Financial Adnsons Ltd.*	*18-24*
4.	*Copy of Bank Account of Achal Gupta*	*25-31*
5.	*Copy of Transaction statement issued From National Securities Depositary Ltd.*	*32-46*

6.1 The above documents clearly demonstrates that assessee had purchased shares through Brokers for which the payment was made through banking channels. The assessee had sold shares through authorized stock broker and payment was received through baking channels after deduction of STT. On Page 16 which is a copy of Bank account of assessee there is evidence of payments to Suktara Trade link amounting to Rs.8,25,000/- for purchase of 25000 equity shares of CCL Ltd. The bill of broker of Suktara Trade Link is at Page 17. The evidence of sale of such shares through Edelwise financial Advisors Ltd showing deduction of service tax and securities transaction tax is placed at P.B. 18 to 23. Paper book pages 32 shows that shares of CCL International Ltd. were in the demat account of assessee and the fact of these shares having been transferred to the account of brokers M/s Edelwise Financial Advisors on account of sale is also apparent from this paper. The transaction statement placed in paper *book also proves that assessee was holding a number of scrips. All the documents clearly demonstrate that assessee did earn long term capital gain and moreover the Assessing Officer has not doubted any of the above documents. The only objection raised by the authorities below is that the scrip from which the assessee had earned Long Term Capital Gain has been held by the Investigation Wing of the Revenue to be a paper entity and which has further held that this scrip was being used for creating artificial capital gain. We find that Hon'ble Tribunal in the case of Reeshu Goel has examined this aspect and after recording detailed findings has held this scrip to be a genuine scrip and has held that the scrip is not a paper entity. The detailed findings of the Tribunal, as contained from para 16 are reproduced below:*

> *"16. We have heard the rival submissions and also perused the relevant finding given in the impugned orders as well as material referred to before us. As stated above, the assessee has applied for 50,000 shares of M/s. AAR Infrastructure Ltd. for face value of Rs.10 and paid consideration of Rs.5 lacs vide cheque no.169799 dated 13.01.2011. The said purchase has been recorded in the accounts of the earlier year and is also reflected from the copy of bank statement place at paper book at pages 25. The purchases made in the earlier years have been accepted as only net LTCG has been taxed by the Assessing Officer. The assessee was allotted shares of M/s. AAR Infrastructure Ltd. and immediately thereafter, the assessee had dematerialised the shares on 26.02.2011 which is evident from the copy of Demat account enclosed at pages 27 to 28 of the paper book. Later, M/s. AAR Infrastructure got amalgamated with M/s. CCL International Ltd. and according to amalgamation scheme, the assessee received 1,25,000 shares of M/s. CCL International Ltd. in the proportion of 250 equity shares Rs.2 per share and Rs.100 equity share of Rs.10 per share. The shares which were allotted on 17.02.2011 have been sold after period of more than 18 to 20 months, i.e., on 29.08.2012 to 10.10.2012. The said shares have been*

sold through stock broker M/s. Indianivesh Securities Pvt. Ltd.

17. Before us the ld. counsel has in his brief note has stated that following documents and statements were filed before the authorities below:

(a) All the transactions were supported by proper Contracts Notes and delivery of shares was made through De-mat Account with stock broker, M/s Indianivesh Securities Pvt. Ltd. (who is the member of BSE and registered with SEBI). The shares were sold in the open market. The appellant has fulfilled all the condition u/s 10(38) of the Income Tax Act, 1961. The appellant has already filed National Security Depository Limited generated Demat Account and the broker statement relating to the sale of share in our paper book, also relevant demat statement highlighting the shares purchased has already been submitted before the Ld. AO.

(b) The appellant has earned long term capital gain through genuine purchase and sale of shares of the listed companies in normal course. There was no default on the part of the appellant. Moreover, the appellant has earned the income strictly following the norms and guidelines of SEBI. If M/s CCL International has been identified as BSE Listed penny stock, the appellant is not even remotely connected with these companies. She was not at all in a position to influence the purchase and sale prices of their shares. Hardship cannot be brought on the appellant, if default is made by company which is listed in the BSE.
c) In support of the genuineness of the transaction the appellant produced the following at the time of assessment proceeding:

> *a) Copy of allotment letter issued by M/s AAR Infrastructures Limited. (Page 25)*
> *b) Copy of bank statement reflecting the payment made for the purchase of 50000 equity shares. (Page 26)*

c) Copy of Demat Account of the appellant. (Page 27)

d) Copy of statement of broker reflecting the credit of 50000 equity share through preferential allotment. (Page 28)

e) Copy of order of Delhi High Court, dated 08.10.2011 in the matter of amalgamation of M/s AAR Infrastructure Limited into M/s CCL International Limited. (Page 29-44) f) Copy of Contacts notes reflecting the sale proceeds. (Page 45-50)

g) Copy of Transaction statement reflecting the increase in the number of shares. (Page 51)

h) Copy of Bank Statement of the appellant reflecting the amount received on sale of shares. (Page 54).

18. The entire premise of the Assessing Officer for treating the entire transaction to be a bogus Long Term Capital Gain and making addition u/s. 68 is that, firstly, M/s. CCL International Ltd. did not have much financial worth to justify such a price rise; secondly, the SEBI had suspended the trade of the share for a brief period; thirdly, he has pointed out the history of price rise between 06.02.2010 to 25.11.2014 and then has drawn adverse inference that price of these shares were manipulated and rigged in the stock exchange which was solely to provide accommodation entries to the various parties; and lastly, he has also referred to certain inquiry report of Investigation Wing Kolkata during the course of which certain brokers have admitted that they had provided accommodation entries in the scrip of M/s. CCL International. But nowhere in the entire assessment order, there is any reference to any material or evidence that assessee or assessee's broker have been found to be indulged in any kind of accommodation entry in this scrip. No inquiry whatsoever has been made from the broker of the assessee. Further, during the period in which assessee had purchased the shares and had sold them whether the SEBI had suspended the trading has not been *mentioned, in fact, Assessing Officer himself mentions that there was brief suspension in the year 2010, whereas the assessee has purchased shares in the year 2011 and sold them in the year 2012. Coming to the financials, as culled out from the records, the revenue from the operation of M/s. CCL International Ltd. from March, 2010 to March, 2012 was between Rs. 55.25 crore to Rs. 79 crore. Thus, it cannot be held that it was mere a paper entity. From a bare perusal of the history of listing and trading of shares and the quote of Bombay Stock Exchange as quoted in the assessment order, it clearly reflects that as on 06.02.2010, the closing price was Rs. 50 and there was a steady increase and within the period of 4 years the price had reached up to Rs.609 on 25.11.2014. Nowhere, it has been pointed out that the rise was beyond the cap laid down by the SEBI, because the price of the scrip cannot rise beyond the cap prescribed by the SEBI. If the shares have been purchased and sold from the stock exchange on a quoted price with proper contract number, trade time and after paying STT, then it is very difficult to assume that the sale proceeds received from sale of such shares is bogus, especially when purchase of shares are not in dispute. This inter alia means assessee was in possession of shares which were also dematerialised. To prove that such a transaction was in the nature of bogus or colourable transaction, there has to be some inquiry or material to nail the assessee that she was some kind of a beneficiary in some accommodation entry operation. No defect has been pointed out in the documents submitted by the assessee nor has the broker of the assessee been inquired upon. Simply relying upon the general modus operandi and statement of some brokers recorded by the Kolkata Investigation Wing does not mean that all the transactions undertaken of the scrip M/s. CCL International Ltd. through the country by millions of subscribers are bogus. Thus, in absence of any material or evidence against the assessee, we do not find any reason as to why the claim of Long Term Capital Gain from sale of such share should be denied.*

> *Consequently, the addition on account of commission is also deleted. Accordingly, we delete the addition made by the Assessing Officer."*

6.2 The above findings of the Tribunal clearly demonstrate that the Tribunal has held the scrip of CCL International Ltd. to be a genuine scrip and has therefore, allowed the appeal of the assessee.

6.3 As regards the reliance placed by Learned D. R. on the order of Udit Kalra (supra), we find that the above case law has been held to be distinguishable by Hon'ble Delhi Tribunal in the case of Karuna Garg in I.T.A. No.1069/Lkw/2019 and further in the case of Swati Luthra vs. Income Tax Officer in I.T.A. No.6480/Lkw/2019, dated 28/06/2019. In these two cases the Hon'ble Tribunal has again allowed relief to the assessee though from a different scrip but in the decisions they have held that the judgment of Hon'ble Delhi High Court in Udit Kalra was distinguishable as in that case the Hon'ble High Court has only dismissed the appeal as the Hon'ble High Court found that the issue involved was only a question of fact. In this respect, para 28 of the Tribunal order in the case of Karuna Garg is relevant which is reproduced below:

> *"28. The DR heavily relied upon the judgment of Hon'ble High Court of Delhi in the case of Udit Kalra Vs. ITO in ITA No.220/2019. We have carefully perused the order of the Hon'ble High Court and on going through the said judgment we find that no question of law was formulated by the Hon'ble High Court of Delhi in the said case and there is only dismissal of appeal in limine as the Hon'ble High Court found that the issue involved is a question of fact."*

6.4 Similarly in the case of Swati Luthra (supra), the Hon'ble Tribunal while dealing with the case law of Udit Kalra vide para 14 has held as under:

> *"14. That the ld DR during the course of hearing placed heavy reliance on judgment of Hon'ble High Court of Delhi in the case of Udit Kalra vs ITO in ITA*

No. 220/2019. Relevant extracts of said judgment are extracted as below:

> *"The assessee is aggrieved by the concurrent findings of the tax authorities - including the lower appellate authorities rejecting its claim for a long term capital gain reported by it, to the tune of Rs.13,33,956/- and Rs.14,34,501/- in respect of 4,000 shares of M/s Kappac Pharma Ltd. The assessee held those shares for approximately 19 months; the acquisition price was Rs.12/- per share whereas the market price of the shares at the time of their sale, was Rs.720/-. It is contended that the assessee was not granted fair opportunity.*
>
> *Mr. Rajesh Mahna, learned counsel appearing for the assessee relied upon the orders of the co-ordinate Bench of the tribunal, in respect of the same company i.e. M/s Kappac Pharma Ltd., and pointed out that the tax authority's approach in this case was entirely erroneous and inconsistent.*
>
> *The main thrust of the assessee's argument is that he was denied the right to cross-examination of the two individuals whose statements led to the inquiry and ultimate disallowance of the long term capital gain claim in the returns which are the subject matter of the present appeal.*
>
> *This court has considered the submissions of the parties. Aside from the fact that the findings in this case are entirely concurrent - A.O., CIT(A) and the ITAT have all consistently rendered adverse findings - what is intriguing is that the company (M/s Kappac Pharma Ltd.) had meagre resources and in fact reported consistent losses. In these circumstances, the astronomical growth of the value of company's shares naturally excited the suspicions of the Revenue. The company was even directed to be delisted from the stock*

exchange. Having regard to these circumstances and principally on the ground that the findings are entirely of fact, this court is of the opinion that no substantial question of law arises in the present appeal.

This appeal is accordingly dismissed."

15. On going through the aforesaid judgment, we find that no question of law was formulated by Hon'ble High Court of Delhi in the said case and there is only dismissal of appeal in limine and the Hon'ble High Court found that the issue involved is a question of fact as held by Hon'ble Apex Court in Kunhayyammed vs State of Kerala reported in 245 ITR 360 and also in CIT vs. Rashtradoot (HUF) reported in 412 ITR 17. Even on merits and facts, the said judgment in the case of Udit Kalra vs ITO (supra) is distinguishable as in that case the scrips of the company were delisted on stock exchange, whereas, in the instant case, the interim order of SEBI in the cases of M/s Esteem Bio and M/s Turbotech have been cooled down by subsequent order of SEBI placed by assessees in its paper book. Thus, the case of Udit Kalra vs ITO relied by ld. DR is clearly distinguishable on facts and is not applicable to the facts of assessee. Thus, we hold that the case of assessee is factually and materially distinguishable from the facts of the case of Udit Kalra vs ITO so relied by ld DR."

Therefore, the case law relied upon by Learned D. R. is not applicable to the facts and circumstances of the present case as that case was decided by Hon'ble High Court on the basis of facts and circumstances of that case. Therefore, the present case is fully covered by the decision of Hon'ble Delhi Tribunal in Reeshu Goel (supra) wherein the same scrip from which the assessee had obtained Long Term Capital Gain has been held to be genuine. Therefore, following the same, we hold that the scrip of CCL International Ltd. is genuine and not a penny stock and paper entity.

> *7. In view of the above judicial precedents and keeping in view the facts and circumstances of the case, Ground No. 5 to 8, the appeal of the assessee in I.T.A. No. 501 is allowed. Ground Nos. 9 and 10, are also allowed in view of our findings that the transaction was not bogus.*

6. Respectfully following the above Tribunal order, we allow ground No. 5 to 8 of the appeal. Rest of the grounds were not argued and therefore, these are dismissed as not pressed.

7. In the result, the appeal of the assessee stands partly allowed.

(Order pronounced in the open court on 18/01/2021)

Sd/.	**Sd/.**
(A. D. JAIN)	**(T. S. KAPOOR)**
Vice President	**Accountant Member**

Dated:18/01/2021
*Singh

<u>Copy of the order forwarded to</u> :
1. The Appellant
2. The Respondent.
3. Concerned CIT
4. The CIT(A)
5. D.R., I.T.A.T., Lucknow